
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

PHILLIP DEAN,

Plaintiff,

v.

MARTIN JOSEPH O'MALLEY,
Commissioner of the Social Security
Administration,

Defendant.

**MEMORANDUM DECISION AND
ORDER ADOPTING REPORT AND
RECOMMENDATION IN FULL**

Case No. 2:23-CV-00628-JNP-DAO

District Judge Jill N. Parrish
Magistrate Judge Daphne A. Oberg

On January 17, 2024, Plaintiff Phillip Dean (“Mr. Dean”) filed his Motion for Review of Agency Action (ECF No. 18). Mr. Dean argues that Defendant Martin Joseph O’Malley, Commissioner of the Social Security Administration (the “Commissioner”) partially denied Mr. Dean’s claim for Social Security Disability Insurance (“SSDI”) benefits without substantial evidence. The Defendant filed a response memorandum requesting that the court affirm the Commissioner’s decision to partially approve and partially deny Mr. Dean’s SSDI claim.

On July 12, 2024, Magistrate Judge Oberg issued a Report and Recommendation with the following conclusion: “Because the ALJ applied the correct legal standards and his RFC findings are supported by substantial evidence, the undersigned RECOMMENDS the district judge AFFIRM the Commissioner’s decision.” ECF No. 24, at 12–13. The Report and Recommendation notified the parties that a failure to file a timely objection to the recommendation may constitute a waiver of any objections upon subsequent review. *Id.* at 13. No party objected to the Report and Recommendation and any argument that it was in error has thus been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if “the interests of justice so dictate.” *Moore v. United States*, 950 F.2d 656, 659

(10th Cir. 1991); *see also Duffield v. Jackson*, 545 F.3d 1234, 1238 (10th Cir. 2008) (listing factors to apply in determining whether the interests of justice require an exception to the waiver rule).

The court does not find an exception to the waiver rule required in the interests of justice.

Thus, having reviewed Judge Romero's recommendation, the court concludes it is not clearly erroneous and **ADOPTS IN FULL** the Report and Recommendation (ECF No. 24).

Accordingly, the court **ORDERS** as follows:

1. The Report and Recommendation (ECF No. 24) is **ADOPTED IN FULL**.
2. The Commissioner's final decision to partially approve and partially deny Plaintiff's SSDI benefits claim is **AFFIRMED**.

Signed July 30, 2024

BY THE COURT



Jill N. Parrish
United States District Court Judge